



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

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## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

MEMORIAL HERMANN HOSPITAL SYSTEM  
3200 SW FREEWAY SUITE 2200  
HOUSTON TX 77027

#### **Carrier's Austin Representative Box**

01

#### **MFDR Date Received**

FEBRUARY 27, 2007

#### **Respondent Name**

LIBERTY MUTUAL INSURANCE CO

#### **MFDR Tracking Number**

M4-07-3911-01

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary Dated February 26, 2007:** "This patient was admitted to Memorial Hermann Hospital by Dr. Ajay Bindal to perform a complicated L5-S1 reoperation, laminectomy, and fusion. This surgery was necessitated due to complications arising out of the patient's original on-the-job injury of July 10, 2004. This surgery is an inherently complicated procedure requiring extensive services and supplies, and operating room time. The patient was hospitalized at Memorial Hermann from February 27, 2006 through March 1, 2006." "In this case, the hospital's usual and customary charges for room and board, ancillary services, drug charges and implants amounted to \$61,446.23, and exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline, Rule 134.401(c)(6)." "Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges."

#### **Requestor's Supplemental Position Summary Dated November 10, 2011 and November 30, 2011:**

"The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method". "Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement of \$37,051.88."

**Affidavit of Michael C. Bennett dated November 1, 2011:** "I am the System Executive of Patient Business Services for Memorial Hermann Healthcare System (the 'Hospital')." "With respect to this case, Mr. Bennett unequivocally states the total charges exceed \$40,000, the usual and customary fees charged are for like or similar services and do not exceed the fees charged for similar treatment of an individual of an equivalent standard of living and paid by someone acting on that individual's behalf, and the admission required unusually costly services."

**Affidavit of Patricia L. Metzger dated November 21, 2011:** "I am the Chief of Care Management for Memorial Hermann Healthcare System (the 'Hospital')." "Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's diagnosis and extent of injury, the services and surgical procedures performed on this patient were complicated and unusually extensive."

**Amount in Dispute: \$37,051.88**

## **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary Dated March 16, 2007:** "It is Liberty Mutual's position that MHHS Southwest Hospital is due no further reimbursement for services rendered to (claimant) between dates of service 02/27/06-03/01/06."

**Response Submitted by:** Liberty Mutual Insurance Co., 2875 Browns Bridge Rd., Gainesville, GA 30503

**Respondent's Supplemental Position Summary Dated November 30, 2011:** "Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any rationale for the Requestor's qualification for payment under the Stop-Loss Exception, Respondent appropriately issued payment per the standard Texas surgical per diem rate. No additional monies are due to the Requestor."

**Response Submitted by:** Hanna & Plaut, LLP, 211 East Seventh Street, Suite 600, Austin, Texas 78701

## **SUMMARY OF FINDINGS**

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
February 27, 2006 through March 1, 2006	Inpatient Hospital Services	\$37,051.88	\$0.00

## **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### **Explanation of Benefits**

- Z585 – The charge for this procedure exceeds fair and reasonable.
- Z695 – The charges for this hospitalization have been reduced based on the fee schedule allowance.
- Z560 – The charge for this procedure exceeds the fee schedule or usual and customary allowance.
- W1-Workers Compensation state fee schedule adjustment.
- W10-No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology.
- 97-Payment is included in the allowance for another service/procedure.
- X094-Charges included in the facility fee.
- Z989-The amount paid previously was less than is due. The current recommended amount is the result of supplemental payment.

### **Issues**

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?

4. Is the requestor entitled to additional reimbursement?

**Findings**

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$61,446.23. The Division concludes that the total audited charges exceed \$40,000.
2. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals' November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services” and further states that “...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor in its original position statement states that “This patient was admitted to Memorial Hermann Hospital by Dr. Ajay Bindal to perform a complicated L5-S1 reoperation, laminectomy, and fusion. This surgery was necessitated due to complications arising out of the patient's original on-the-job injury of July 10, 2004. This surgery is an inherently complicated procedure requiring extensive services and supplies, and operating room time. The patient was hospitalized at Memorial Hermann from February 27, 2006 through March 1, 2006.” “In this case, the hospital's usual and customary charges for room and board, ancillary services, drug charges and implants amounted to \$61,446.23, and exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline, Rule 134.401(c)(6).” “Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges.” This position does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. In its supplemental position statement, the requestor asserts that: “The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method”. “Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement of \$37,051.88.” In support of the requestor's position that the services rendered were unusually extensive, the requestor submitted affidavits from the System Executive of Patient Business Services for Memorial Hermann Healthcare System, and from the Chief of Care Management for Memorial Hermann Healthcare System. The requestor's supplemental position and affidavits failed to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive compared to similar spinal surgery services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).

3. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor’s position statements, nor the affidavits provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
  - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was two days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of two days results in an allowable amount of \$2,236.00.
  - 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
  - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$24,866.25.
  - Review of the medical documentation provided finds that although the requestor billed items under revenue code 278, no invoices were found to support the cost of the implantables billed. For that reason, no additional reimbursement can be recommended.
  - 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (ii) Computerized Axial Tomography (CAT scans) (revenue codes 350-352,359).” A review of the submitted hospital bill finds that the requestor billed \$1,493.75 for revenue code 350-CT Scan. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 350 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
  - 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$320.00/unit for Thrombin 5mu. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is \$2,236.00. The respondent issued payment in the amount of \$9,032.79. Based upon the documentation submitted no additional reimbursement can be recommended.

### **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

## ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

### Authorized Signature

_____	_____	12/12/2012
Signature	Medical Fee Dispute Resolution Officer	Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**